

RESOLUTION No. 2006-145-491

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, THAT CERTAIN AGREEMENT FOR THE BILLING OF STORMWATER CHARGES BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI GARDENS, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County, through its Miami-Dade Water and Sewer Department operates the water and sewer utility systems within the City of Miami Gardens, and

WHEREAS, the City desires to be responsible to operate and maintain the stormwater utility system within the City boundaries, and

WHEREAS, the City has requested the County to administer, bill and collect a stormwater utility service charge simultaneously with the issuance of the County's bills for water and sewer service, and

WHEREAS, this County and the City have agreed that Miami-Dade County will collect stormwater charge billings on behalf of the City of Miami Gardens in accordance with the attached Agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORITY: The Mayor and City Clerk are hereby authorized and directed to execute and attest, respectively, that certain Agreement for the billing of

stormwater charges between Miami-Dade County and the City of Miami Gardens, a copy of which is attached hereto as **Exhibit A**.

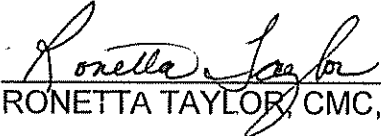
Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement, with one to be maintained by the City; with one to be delivered to Miami-Dade County, and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON DECEMBER 13, 2006.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

Prepared by SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: Dr. Danny O. Crew, City Manager

MOVED BY: Vice Mayor Braynon
SECONDED BY: Councilman Bratton

VOTE: 7-0

| | | |
|-------------------------------|----------------|----------------|
| Mayor Shirley Gibson | <u>x</u> (Yes) | <u> </u> (No) |
| Vice Mayor Oscar Braynon, II | <u>x</u> (Yes) | <u> </u> (No) |
| Councilman Melvin L. Bratton | <u>x</u> (Yes) | <u> </u> (No) |
| Councilman Aaron Campbell | <u>x</u> (Yes) | <u> </u> (No) |
| Councilman Andre Williams | <u>x</u> (Yes) | <u> </u> (No) |
| Councilwoman Sharon Pritchett | <u>x</u> (Yes) | <u> </u> (No) |
| Councilwoman Barbara Watson | <u>x</u> (Yes) | <u> </u> (No) |



City of Miami Gardens

1515 NW 167th Street, Bldg. 5,
Suite 200
Miami Gardens, Florida 33169

Mayor Shirley Gibson
Vice Mayor Aaron Campbell
Councilman Melvin L. Bratton
Councilman Oscar Braynon II
Councilman André Williams
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson

MEMORANDUM

**To: The Honorable Mayor &
City Council Members**

**From: Dr. Danny O. Crew
City Manager**

Date: December 4, 2006

Re: Stormwater Billing Agreement with Miami-Dade County

This Stormwater Billing Agreement is with Miami Dade County to collect the stormwater fees in their utility bills for the City's portion. Since the City does not have a mechanism in place to collect the user fees from the residents and commercial properties, the County will continue to collect the City's stormwater utility's portion of the user fees and maintain records (to justify charges, expenses, and costs) for a fee of \$0.87 per bill (billed quarterly) for all accounts. The portion of the City that is being serviced by North Miami Beach will be collected by North Miami Beach for a nominal fee, which will be on a separate agreement with North Miami Beach.

Recommendation:

That the City Council approves the stormwater billing agreement with Miami Dade County.

**J-7) CONSENT AGENDA
RESOLUTION
STORMWATER BILLING
AGREEMENT**

AGREEMENT FOR THE BILLING OF
STORMWATER CHARGES
BETWEEN
MIAMI-DADE COUNTY
AND
CITY OF MIAMI GARDENS

THIS AGREEMENT, entered into this ___ day of _____, 2007, by and between the CITY OF MIAMI GARDENS, FLORIDA, a municipal corporation of the State of Florida (the "CITY"), and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "COUNTY")

WITNESSETH.

WHEREAS, the COUNTY, through its Miami-Dade Water and Sewer Department (the "Department"), operates the water and sewer utility systems within the CITY; and

WHEREAS, the CITY desires to be responsible to operate and maintain the stormwater utility system within the CITY boundaries, and

WHEREAS, by Resolution No. _____, approved on _____, 2007, by the Board of County Commissioners, as of March 1, 2007 the CITY shall be exclusively responsible to operate and maintain the stormwater utility system within the CITY boundaries, and

WHEREAS, the CITY has requested the COUNTY to administer, bill and collect a stormwater utility service charge simultaneously with the issuance of the COUNTY's bills for water and sewer service, and

WHEREAS, the CITY acknowledges that there are several customers within CITY boundaries who are not provided water and sewer service by the Department and stormwater billing services for such customers are not a part of this agreement, and

WHEREAS, the COUNTY needs to retain, from the stormwater utility service charges it collects for the CITY, on a monthly basis, the CITY's pro-rata share of debt service on the Stormwater Utility Revenue Bonds, Series 1999 and Series 2004 (the "Stormwater Bonds") outstanding on the Exemption Date of the City from the Miami-Dade County Stormwater Utility;

NOW, THEREFORE, in consideration of mutual advantages, it is agreed:

Section 1. The CITY, jointly with the COUNTY, will designate and cause to be identified from time to time the water and sewer service accounts of the Department which thereafter, under the rules and regulations of the CITY, shall be billed for stormwater utility service charges. The CITY shall designate the rate classifications applicable thereto in writing in a format acceptable to the COUNTY. The COUNTY shall act thereon until such designations and classifications are changed in writing by the CITY. The CITY understands and accepts that the COUNTY shall consider the person or persons whose names appear on the COUNTY's water and sewer service account as the persons responsible for the stormwater utility service charges at the location involved.

Section 2. The CITY shall deliver to the COUNTY a minimum of thirty (30) calendar days in advance of the effective date its schedule of rates and any revisions of such schedule of rates by furnishing to the Department's Assistant Director of Finance a certified copy of the ordinance or other action of the CITY promulgating said revised schedule of rates. Until the COUNTY is so furnished with a revised schedule, the COUNTY shall act upon the prior delivered schedule. The stormwater utility service charge shall be prorated in accordance with the revised schedule of rates. No security deposits shall be collected by the COUNTY nor shall delinquent penalty charges be imposed by the COUNTY on the stormwater utility charge.

Section 3. The COUNTY agrees, during the COUNTY's regular and periodic billing procedures, to cause to be billed and collected from each water and sewer customer under said accounts, as an added and designated separate item on the bill, the stormwater utility service charge, according to the schedule of rates established by the CITY for such customer. During the term of this Agreement, this shall be the exclusive method for billing stormwater utility service charges by the County, no separate bills shall be issued, except for those bills that may be generated by the CITY. The CITY authorizes and empowers the COUNTY to render such billing for the CITY's account and on the payment thereof to give receipt and acquittance therefore, either by endorsement of payment upon such billings or by separate receipt. Upon the initial billing by the COUNTY to each user of stormwater utility service and at any time during the term of this agreement, as deemed necessary by the COUNTY or the CITY, the CITY shall at its sole cost and expense and independent of this Agreement, advise such user of the method and arrangement between the CITY and the COUNTY for the billing and collection of said charge by the COUNTY for and on behalf of the CITY as the CITY's agent. The COUNTY shall not be responsible for the notification of new owners, occupants or tenants that there is a stormwater utility service charge.

Section 4. The COUNTY agrees to observe the same diligence, policy and procedure in the billing, and collection of stormwater utility service accounts as is used by the COUNTY in billing and collecting its water service accounts, except that the COUNTY shall not terminate water and/or sewer service for non-payment of stormwater utility service charges, except when account balances exceed \$100 nor shall it institute or maintain suits at law for collection of stormwater utility service charges. The COUNTY may provide water and sewer service to customers irrespective of said customer's failure to pay the applicable stormwater utility charge. The COUNTY shall not be responsible for the billing of accounts that are inactive. The COUNTY shall not file any liens on property for the collection of the stormwater utility charges. Legal actions for non-payment of stormwater utility charges shall be the sole responsibility of the CITY.

Section 5. The COUNTY will keep correct and proper books of accounts, showing monthly gross billings of stormwater utility service charges, and shall provide to the CITY a monthly statement in writing, showing the net amount owed the CITY by the COUNTY for the month covered by such statement. The COUNTY shall provide this statement and the remittance due the CITY within sixty (60) days of the end of each monthly period. Based on such statement, the COUNTY shall make payment to the CITY of the amount due, less the COUNTY's compensation for the billing and collection of said charges and less any other payments or deductions as hereinafter specifically provided in Paragraphs 7, 10, and 11 of this Agreement.

The CITY agrees that the COUNTY shall remit monthly payments based on the collection of stormwater utility service charges, when the COUNTY's billings system is capable of this method of remittance.

Section 6. For billings performed from March 1, 2007 through the expiration of this agreement, the stormwater billings and remittance to the CITY shall be as shown below.

- A. Quarterly billings represent service rendered for the previous 90 day period and shall be prorated for a period from March 1, 2007 through May 31, 2007 as follows:

March 2007 – 83 3% of the revenue billed shall be retained by the COUNTY and 16 7% shall be remitted to the CITY

April 2007 – 50% of the revenue billed shall be retained by the COUNTY and 50% shall be remitted to the CITY.

May 2007 - 16 7% of the revenue billed shall be retained by the COUNTY and 83 3% of shall be remitted to the CITY.

- B. Monthly billings represent service rendered for the previous 30-day period, therefore, for the month of March 2007, the revenue billed shall be prorated and 50% of the revenue shall be retained by the COUNTY and 50% of the revenue shall be remitted to the CITY.
- C. For monthly billings performed after April 1, 2007 and quarterly billings performed after June 1, 2007, to the termination of the agreement, 100% of the billed amounts will be paid to the CITY less the deductions as provided in Sections 7, 10 and 11.

Section 7. Adjustments for uncollected stormwater billings shall be made on a regular basis, at least annually, as a deduction provided in Section 5.

Section 8. Upon written request from the CITY, the COUNTY shall make available for inspection or audit by the CITY and its representatives at any reasonable time all of its records pertaining to the COUNTY's actions under this Agreement as agent for the CITY and shall also furnish to the CITY such information concerning the administration of this Agreement as the CITY may reasonably request, including information as to delinquent stormwater utility charges and accounts not currently being billed. Should the CITY, in any audit of the COUNTY's records, find a discrepancy between the amount of funds remitted to the CITY and the actual billing and collection by the COUNTY, the COUNTY shall within 30 days of receipt of written notification from the CITY remit to the CITY the sums owed.

Section 9. Both the CITY and the COUNTY recognize that in the billing and collection of stormwater utility service charges involving thousands of customers, numerous situations arise which require discretion. The CITY agrees with the COUNTY that the COUNTY may use its best judgment in such instances. The COUNTY's method or manner shall not be considered as negligence under or independent of the terms and conditions of this Agreement or as a breach thereof and the COUNTY shall not be liable or responsible to the CITY for any loss in stormwater utility service charge revenues by reason of the COUNTY's discretionary handling of such situations.

Specifically, the COUNTY shall have the right to remove or adjust the stormwater utility service charge from a customer's bill if the customer provides proof acceptable to the COUNTY that he or she was not the owner, occupant or tenant of the property on the date that the stormwater utility service charge was applied. However, the COUNTY shall advise the CITY of all adjustments to CITY accounts as part of the monthly statements provided pursuant to Section 5. Except as otherwise specified in this paragraph, any adjustments to accounts assessed a stormwater utility service charge shall be initiated solely by the CITY and provided to the COUNTY in writing.

Section 10. The CITY agrees to pay to the COUNTY and the COUNTY shall receive from the CITY, by means of deduction from payments for monthly billings, compensation determined as follows.

- A. A one-time reimbursement in the amount of \$500.00 to the COUNTY for costs incidental to the COUNTY's establishment of the original records necessary for the COUNTY to bill stormwater utility service charges or accounts for and on behalf of the CITY and as the agent of the CITY, including but not limited to (1) payroll cost and related overhead costs, (2) equipment purchased for the exclusive use of maintaining records necessary for billing said charges, (3) cost of all changes in COUNTY's billing equipment to make feasible the COUNTY's billing for stormwater utility service charges. This amount shall be deducted from the first payment to the CITY, and
- B. For the period from March 1, 2007, until this agreement is modified pursuant to Section 12 hereinafter, a charge in the amount of eighty-seven cents (\$0.87) per bill for all accounts to be charged the CITY's stormwater utility service charge, and
- C. For all costs and expenses incurred and paid by the COUNTY during the preceding month in defending legal actions brought against the COUNTY by any person, firm or corporation, excluding the CITY, involving billing or collection of stormwater utility service charges on behalf of the CITY, or involving the COUNTY's administration of the terms and conditions of this Agreement.

The COUNTY shall notify the CITY in writing of any legal claims filed against the COUNTY pertaining to the COUNTY's billing and collection of the CITY's stormwater fees within thirty (30) working days of receipt of any claim. The CITY shall have the option to defend the COUNTY on any such claims and settle or compromise the same unless such a claim involves employee dishonesty or theft.

Section 11. The CITY agrees to pay to the COUNTY and the COUNTY shall receive from the CITY, by means of deduction from payments for monthly billings of stormwater utility service charges collected by the COUNTY for the CITY, the CITY's pro-rata share of debt service on (i) the Stormwater Bonds until they are paid in full or provision made for their payment pursuant to Article IX of Ordinance No. 98-187, enacted by the Board on December 15, 1998 in accordance with the debt service schedule set forth in Exhibit A and (ii) any obligations associated with cost sharing Stormwater Management Projects that may include, but not be limited to, canal dredging, canal maintenance and drainage projects agreed to subsequent to the date of this Agreement for which payment will be based on a mutually agreed fraction. For any payments pursuant to (ii) above, the COUNTY, through its Department of Environmental Resources Management with a copy to Miami-Dade Water and Sewer Department, will inform the CITY thirty (30) calendar days prior to the beginning of each Fiscal Year, the amount of stormwater utility service charges the County will retain each month in addition to the those retained pursuant to Exhibit A. Upon agreement by both parties, Exhibit A may be modified to include any additional CITY share of debt service due to future CITY annexations.

Section 12. The COUNTY reserves the right to review and revise the charges provided for in Section 10 (B) hereinabove and, revise charges.

Section 13. All telephone calls and correspondence from customers regarding the stormwater utility shall be the responsibility of the CITY. The COUNTY shall cause the telephone number for the CITY, as provided by the CITY, to be printed on the COUNTY's regular bill stock.

Section 14. The CITY agrees that the COUNTY shall not be held liable for any damage, delay or other loss which the CITY may experience as a result of the COUNTY's practices in administering this Agreement, unless such loss arises from negligence of the COUNTY, its employees or agents.

Section 15. This Agreement shall remain in full force and effect for a period of five (5) years after its date of execution. This Agreement may be extended at that time by written mutual consent of the parties hereto, without which it shall terminate. Notwithstanding the above provisions, this Agreement shall terminate and be cancelled without further writings between the CITY and the COUNTY upon either party providing six (6) months notice in writing to the other party so advising the other party.

Notwithstanding the provisions of this paragraph, should the COUNTY fail to timely bill the CITY's customers in accordance with the agreed upon billing cycles and rates or fail to remit payment to the CITY in the timeframes specified in Paragraph 5 or 6, the CITY may terminate this Agreement on thirty (30) days written notice to the COUNTY.

Notwithstanding the above, this Agreement may not be terminated at any time without a COUNTY approved alternate method of payment by the CITY to the COUNTY of the CITY's outstanding debt service obligation for the Stormwater Bonds.

Section 16. It is understood and agreed between the CITY and the COUNTY that the COUNTY's obligation is limited to billing and collection of stormwater utility service charges as specifically provided for in this Agreement.

Section 17. The CITY shall not allow or permit construction or installation of any connections of stormwater mains which allow stormwater to enter the COUNTY's sanitary sewer system. The CITY agrees to use its best efforts to detect and lawfully disconnect all stormwater connections to the COUNTY's sanitary sewer system within the CITY's jurisdiction and submit within ninety (90) days of the execution of this Agreement a timetable for the elimination of such stormwater connections which is reasonably acceptable to the COUNTY.

Section 18. This Agreement shall be binding upon the respective successors and assigns of both the CITY and the COUNTY.

Section 19. All references to the CITY under this Agreement that require direction to the COUNTY shall mean the CITY Manager or his designee. Whenever written notice to the CITY is required it shall be sent by Certified Mail, Return Receipt Requested, to the City of Miami Gardens, 1515 N.W. 167th Street, Suite 200, Miami Gardens, Florida, 33169 (Attention: City Manager). Whenever written notice to the COUNTY is required it shall be sent by Certified Mail, Return Receipt Requested, to Miami-Dade County, Miami-Dade Water and Sewer Department, 3071 S.W. 38th Avenue, Miami, Florida 33146, (Attention: Assistant Director-Finance).

Section 20. The County shall maintain adequate records to justify all charges, expensive, and costs relating to County administration billing and collection of Stormwater Utility charges for City of Miami Gardens residences, for at least three years after termination or expiration of this agreement. The CITY shall have access to all books, records, and documents as required in this Section for the purpose of inspection or auditing during normal business hours.

Section 21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The COUNTY and the CITY agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

Section 22. Entirety of Agreement. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understanding applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

Section 23. Heading. Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section 24. Rights of Others. Nothing in this Agreement expressed or implied is intended to confer upon any person other than the parties any rights or remedies or by reason of this Agreement.

Section 25. Representation of City. The CITY represents that this Agreement has been duly authorized, executed and delivered by the City Council of the City of Miami Gardens, as the governing body of the CITY and it has the required power and authority to perform this Agreement and has granted the City Manager the required power and authority to perform this Agreement.

Section 26. Waiver. There shall be no waiver of any right related to this Agreement unless in writing and signed by the Party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement.

Section 27. Invalidity of Provisions, Severability. Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

Section 28. COUNTY shall perform all work and services desired herein as an independent contractor and not as an officer, agent, servant, or employee of the CITY. COUNTY shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and COUNTY shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

Section 29. Indemnification: To the extent permitted by law the CITY shall indemnify and hold harmless the COUNTY and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the COUNTY or its officers, employees, agents or instrumentalities may incur as a result arising out of, relating to or resulting from the performance of this Agreement by the CITY or its employees, agents, servants, partners, principals, subconsultants or subcontractors. The CITY shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within limitations of Section 768.25 Fla. Stat., subject to the provisions of that statute whereby the CITY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgment or portions thereof, which when totaled with all other claims or judgment paid by the CITY arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the CITY.

The COUNTY shall indemnify and hold harmless the CITY and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the COUNTY or its employees, agents, servants, partners, principals, subconsultants or subcontractors. The COUNTY shall pay all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that statute whereby the COUNTY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim of judgment or portions thereof, which when totaled with all other claims or judgment paid by the COUNTY arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the COUNTY.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and

year first above written

MIAMI-DADE COUNTY

ATTEST.

BY. _____
Clerk

BY. _____
County Manager

ATTEST:

CITY OF MIAMI GARDENS

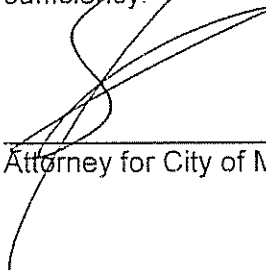
BY. _____
City Clerk

BY. _____
Mayor

Approved as to form and legal
sufficiency.

Assistant County Attorney

Approved as to form and legal
sufficiency:



Attorney for City of Miami Gardens